

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications)	
Act of 1996)	

OPPOSITION OF SPRINT TO PETITION FOR RECONSIDERATION

Sprint Corporation opposes the petition of the Colorado Payphone Association (CPA) for reconsideration of the Commission's Third Report and Order and Order on Reconsideration of the Second Report and Order ("Third Order"), released in this proceeding on February 4, 1999.

In the Third Order, the Commission finally abandoned its misconceived "market-based" approach to establishing per-call compensation rates and properly decided that such rates should be based on a bottom-up cost analysis instead. Nonetheless, the Third Order remains seriously flawed. Both in its use of a so-called "marginal" payphone in determining call counts, and in its rejection of the bellwether approach to rate setting and its selective use of cost data, the Commission seemed determined to prescribe a per-call rate that is far higher than necessary to cover the actual costs of an efficient payphone service provider (PSP). Rather than seeking reconsideration, Sprint and MCI WorldCom, with the support of the rest of the long distance industry, are appealing the Third Order

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directly in the Court of Appeals.¹ In the meantime, the arguments raised by CPA are, for the reasons discussed below, without merit and should be rejected promptly.

A. Cost Issues

CPA criticizes three aspects of calculation of payphone costs in the Third Order. First, it challenges the use of a Model 11A phone in calculating the capital costs of a coinless phone. CPA (at 6-9) simply parrots arguments made by the RBOC Coalition, in their December 1, 1997 Petition for Reconsideration, that the Model 11A is designed for indoor locations and is less durable than a typical coin phone, and faults the Commission for relying, in ¶159, on AT&T representations that it has used the 11A payphone in outdoor locations and that it does have a useful life of ten years, without citing or addressing the merits of the RBOC Coalition's Petition for Reconsideration.

However, the AT&T Opposition on which the Commission relied (cited at n.333 of the Third Order) fully addressed the RBOC Coalition claims. There, AT&T pointed out (at 13-14) that the costs of the Model 11A are fully representative of the costs of the components necessary to provide coinless calls; that AT&T had operated these phones outdoors successfully; that they have a service life of over ten years; and that they do not need to be as robustly constructed as coin phones, because there is no vandalism associated with coinless phones and because there are fewer frustrated customers who

¹ American Public Communications Council v. FCC, CADC No. 99-1114 and consolidated cases. Petitioners' briefs were filed June 24, 1999.

damage phones if their coins are not returned. Thus, the Commission's reliance on the Model 11A was fully justified.²

CPA next argues (at 13-15) that the 11.25% cost of capital utilized by the Commission in its analysis is inadequate. The only evidence CPA points to below is a statement in passing, without any supporting evidence, by APCC in its September 10, 1997 Reply Comments (at 14) that "rates of 15%-18% are more realistic." Clearly, this unsupported claim would have not provided a sufficient evidentiary basis for the Commission to have adopted such a cost of capital.

Although CPA attempts to shore up its petition with a two-page declaration, and seeks to supplement that declaration with further analysis,³ it would be procedurally improper for the Commission to consider such evidence at this late date. Section 1.429(b) (1)-(2) of the Rules precludes consideration of facts that have not previously been presented to the Commission unless the facts have changed or the petitioner could not reasonably have ascertained the facts previously. The "analysis" on which CPA relies, which in essence merely argues that independent payphone providers are riskier and therefore have higher capital costs than the regulated operations of RBOCs, is in no way time specific, and since costs have been at issue in this proceeding from the outset,

² As a result, there is no need to consider CPA's alternative arguments (at 10-13) that the Commission should base its cost analysis on payphones that are similar to coin payphones in functionality and durability or should base the cost calculation on the cost of a typical coin payphone minus the cost of a coin mechanism.

³ See Motion of Colorado Payphone Association for Leave to Supplement Petition for Partial Reconsideration, dated May 19, 1999. In a Public Notice released June 24, 1999 (DA 99-1178) the Bureau denied the motion and stated it would treat the supplement as an ex parte presentation.

there is no reason why CPA (which it may be noted, has not previously participated in this proceeding) could not have presented its analysis at an earlier date. Given the already protracted nature of this litigation, it would hardly be in the public interest for the Commission now to consider the afterthoughts of CPA (cf. §1.429(b)(3)). In any event, there is little reason to believe that the Commission's targeted rate of return for local exchange carriers is inadequate for an efficient payphone provider. In this proceeding, the Commission has deregulated local coin rates, thus giving the payphone providers carte blanche to set rates for calls that account for two-thirds of their total call volume, and has guaranteed compensation for coinless calls as well. Under these circumstances, it is hard to imagine that a payphone provider cannot cover its costs on essentially a risk-free basis.⁴

CPA also faults the Commission's calculation of payphone maintenance costs. In the Third Order, the Commission found that maintenance costs are joint and common and should be recovered through per-call compensation (§175). It further assumed that SBC maintenance data submitted by the RBOC Coalition reflected the costs of SBC and "probably" other RBOCs as well, and created a weighted average of the SBC and Peoples Telephone maintenance costs. It then adjusted this weighted average cost downward by 38% to reflect evidence from Peoples Telephone that 38% of its maintenance visits were either solely or partially related to coin collection. CPA argues (at 15-16) that the

⁴ The PSP's only concern is with the volume of calls from particular payphones. But if volume from a payphone drops to the point of unprofitability, it can easily remove that phone and either place it at a higher volume location or sell it to another provider.

Peoples Telephone data show that only 29% of service visits to its payphones were solely related to coin collection, that another 9% involved a combination of repair and coin collection, and thus that the Commission should have reduced the weighted average of costs by 29% rather than 38%.

There is nothing in the scant information provided in the Peoples Telephone comments on which the Commission relied, to indicate whether the combined maintenance and coin collection visits were occasioned in the first instance by the need to collect coins or the need to perform maintenance. It is entirely conceivable that routine maintenance was performed on visits that were primarily occasioned by coin collection visits and that absent the desire to collect coins there was no need for a maintenance call at that time. Thus, it is not clearly erroneous for the Commission to have included these combined visits – which were, at bottom, coin-related – in reducing the maintenance expense to reflect coin collection costs.

If anything, the Commission's methodology for determining maintenance expense substantially overstated maintenance costs attributable to coinless calls. It is undeniable that because of the added mechanical complexity of the coin mechanism and the vandalism that occurs with coin telephones, the maintenance costs for a coinless telephone – upon which the capital costs were predicated – are substantially lower than maintenance costs for coin phones. AT&T's expert, for example, has testified that coin phones require twice as many repair visits as coinless phones. AT&T's own experience in operating both types of phones, shows that the monthly maintenance and repair costs

are only \$13.35 for coinless phones, compared with \$21.09-\$21.70 for coin phones.⁵ However, both sources of data from which the Commission derived its maintenance estimate – SBC and Peoples Telephone – reflect maintenance costs of coin telephones with no adjustment to account for the lower maintenance needs of coinless phones. Thus, rather than understating maintenance costs, the Commission's approach substantially overstated such costs. The Commission should instead have relied on the AT&T data. At the very least, after adjusting the SBC/Peoples data to remove coin collection costs, the Commission should have adjusted the remaining costs downward to reflect the lower maintenance requirements of coinless phones. Accordingly, if the Commission reconsiders its calculation of maintenance costs in response to CPA's petition, it should adopt a lower cost estimate than the one it used in the Third Order, rather than raising this cost element as CPA argues.

B. Targeted Call Blocking

CPA claims (16-19) that if the Commission felt inhibited from continuing with its market-based approach because of the IXCs' lack of targeted call blocking capabilities – i.e., the capability to block calls from particular payphones to particular numbers -- it should simply have required IXCs to implement targeted blocking.

Clearly there was no error on the Commission's part. In the first place, a requirement that IXCs deploy targeted call blocking was beyond the scope of this proceeding, and had the Commission attempted to impose such a requirement in the

⁵ See Affidavit of David Robinson, sworn to August 26, 1997, attached to AT&T Comments dated August 27, 1997, at ¶12. Mr. Robinson treated coin collection costs separately from maintenance and repair. Id. ¶¶15-16.

Third Order it would have been subject to judicial reversal on APA grounds.

Furthermore, apart from the many other infirmities in the Commission's prior market-based approach to payphone compensation, detailed at length by Sprint and other IXCs in their previous comments to the Commission, targeted call blocking would have imposed nine-figure costs on the industry – costs that ultimately would have to be paid by consumers. Even with targeted call blocking capability, the floating market-based approach would create intractable administrative problems for IXCs.⁶ The Commission clearly had no basis in law or logic for requiring IXCs to undertake these complex and costly measures.

C. Retroactivity

Finally, CPA argues (at 19-25) that the Commission should not have given retroactive effect to the lower rate it prescribed in the Third Order. CPA argues, in essence, that such retroactivity results in unjustly enriching IXCs. In this regard, CPA argues that the IXCs fully recovered prior payphone compensation costs by adjustments to usage rates, surcharges, access cost reductions and a shift in calls from 0+ to access codes calls (which results in lower commission payments from IXCs to payphone providers). CPA is long on rhetoric, but short on facts.

CPA cannot point to any increase in Sprint's usage rates that was tied to recovery of payphone compensation costs. With respect to surcharges, CPA is wrong in suggesting that the IXCs began passing on their dial-around costs as surcharges as early as December 1996. At 22-23, it points to Sprint's tariff filings as evidence of this

⁶ See e.g., Reply Comments of Sprint Corporation, July 27, 1998 at 24-25; and Sprint's August 26, 1997 Comments on Remand Issues, at 5-6.

proposition, arguing that Sprint began imposing a surcharge of 15 cents per call on all traffic effective December 1, 1996 and that it increased the surcharge to 35 cents effective April 1, 1997. What CPA fails to disclose, however, is that this surcharge was limited only to Sprint's resale carriers who were not directly obligated to pay interim, per-line compensation to PSPs.⁷ Thus, even though Sprint was faced with substantial payphone compensation costs in the form of per-line compensation for the November 1996-October 1997 period, it did not begin surcharging end-user customers until October 12, 1997, shortly after per-call compensation went into effect. See Exhibit A, p. 3. Thus, by no stretch of the imagination can Sprint be said to have over-recovered its payphone compensation costs from the surcharges it has imposed on its customers.

As for access charges, Sprint has more than flowed through the access charge reductions resulting from the Commission's decision in this and other dockets in the form of rates paid by its end user customers. Between 1995 and 1998, Sprint's overall rates fell by four cents per minute, while its access costs fell by only one cent per minute. Thus, Sprint cannot be said to have benefited from a "windfall" as a result of the access charge reductions mandated in this Order. Finally, it is disingenuous to argue that IXC's have "benefited" from savings in 0+ commissions as the traffic mix has shifted away from 0+ calls to dial-around calls. Although the IXC's do not incur commissions expense on dial-around calls, the revenues they receive from such calls are markedly lower than the revenues from the typical 0+ call. Sprint now offers rates as low as a dime a minute, with no call set-up charge, on access code calls. In short, there is no merit to CPA's

⁷ See Exhibit A, pp. 1-2.

claims that IXCs have already over-recovered their payphone compensation costs and that as a result the PSPs, rather than IXCs, should benefit from the excessively high rates set in prior orders.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Richard Juhnke", written over a horizontal line.

Leon M. Kesterbaum

Jay C. Keithley

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July 7, 1999

SPRINT

TARIFF F.C.C. NO. 2
Original page _____
2nd Revised page 665.3.8
Cancels 1st page 665.3.8

SPECIALIZED COMMON CARRIER SERVICE

7. RESALE SOLUTIONS SERVICES (Continued)

7.6 Additional Terms and Conditions (Continued)

- .3 Resale Solutions Noncomplete Call Surcharge. In any month in which Reseller exceeds the Resale Solutions Maximum Noncomplete Toll Free Call Percentage for interstate Resale Direct Toll Free and/or Resale Connect Toll Free traffic as stated herein, Reseller shall pay Sprint a surcharge equal to the amount stated herein for each Resale Solutions Noncomplete Toll Free Call in excess of the Resale Solutions Maximum Noncomplete Toll Free Call Percentage. This surcharge will be calculated at each CTIS Product Hierarchy Level.
- .4 Resale Solutions Minimum Port Usage Surcharge. In any month in which Reseller fails to equal or exceed the Resale Solutions Minimum Port Usage per Active Resale Direct Port as stated herein, Reseller shall pay Sprint a surcharge on its Resale Direct usage equal to the difference between (a) the Reseller's actual Resale Solutions Net Usage for Resale Direct service and (b) the Resale Solutions Minimum Port Usage multiplied by the total number of Resale Solutions Active Resale Direct Ports. This surcharge shall be calculated at each CTIS Product Hierarchy Level. See Sections 7.9.3 and 7.10.4 herein.
- .5 Resale Solutions Service Charges. Reseller shall pay Sprint a service charge of \$25.00 for each Resale End User ANI or toll free number that Reseller submits for activation that requires Sprint to disconnect or transfer such ANI or toll free number from Sprint's database before placing it within Reseller's CTIS hierarchy. However, the service charge provided will be waived if such Resale End User ANIs, or toll free numbers, do not exceed 15% of the total ANIs, or toll free numbers, submitted by Reseller during the previous 90 days.
- .6 Tax Exemption Certificates. Resale Solutions pricing and discounts invoiced under CTIS are contingent upon Reseller providing Sprint with certificates from appropriate taxing authorities exempting Reseller from taxes that would otherwise apply under this Tariff.
- .7 Resale Solutions Payphone Surcharge: Reseller shall pay Sprint a per call surcharge of \$0.15 for all originating payphone traffic including FONCARD traffic, toll free switched and dedicated services traffic, Prepaid Card services traffic, and 10XXX-0 Plus Dial Around service traffic. (N)
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|
|
(N)

ISSUED:
November 27, 1996

ISSUING OFFICER:
Sprint Communications Company L.P.
Marybeth M. Banks
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036

EFFECTIVE:
December 1, 1996

SPRINT

TARIFF F.C.C. NO. 2
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3rd Revised page 665.3.8
Cancels 2nd page 665.3.8

SPECIALIZED COMMON CARRIER SERVICE

7. RESALE SOLUTIONS SERVICES (Continued)

7.6 Additional Terms and Conditions (Continued)

- .3 Resale Solutions Noncomplete Call Surcharge. In any month in which Reseller exceeds the Resale Solutions Maximum Noncomplete Toll Free Call Percentage for interstate Resale Direct Toll Free and/or Resale Connect Toll Free traffic as stated herein, Reseller shall pay Sprint a surcharge equal to the amount stated herein for each Resale Solutions Noncomplete Toll Free Call in excess of the Resale Solutions Maximum Noncomplete Toll Free Call Percentage. This surcharge will be calculated at each CTIS Product Hierarchy Level.
- .4 Resale Solutions Minimum Port Usage Surcharge. In any month in which Reseller fails to equal or exceed the Resale Solutions Minimum Port Usage per Active Resale Direct Port as stated herein, Reseller shall pay Sprint a surcharge on its Resale Direct usage equal to the difference between (a) the Reseller's actual Resale Solutions Net Usage for Resale Direct service and (b) the Resale Solutions Minimum Port Usage multiplied by the total number of Resale Solutions Active Resale Direct Ports. This surcharge shall be calculated at each CTIS Product Hierarchy Level. See Sections 7.9.3 and 7.10.4 herein.
- .5 Resale Solutions Service Charges. Reseller shall pay Sprint a service charge of \$25.00 for each Resale End User ANI or toll free number that Reseller submits for activation that requires Sprint to disconnect or transfer such ANI or toll free number from Sprint's database before placing it within Reseller's CTIS hierarchy. However, the service charge provided will be waived if such Resale End User ANIs, or toll free numbers, do not exceed 15% of the total ANIs, or toll free numbers, submitted by Reseller during the previous 90 days.
- .6 Tax Exemption Certificates. Resale Solutions pricing and discounts invoiced under CTIS are contingent upon Reseller providing Sprint with certificates from appropriate taxing authorities exempting Reseller from taxes that would otherwise apply under this Tariff.
- .7 Resale Solutions Payphone Surcharge: Reseller shall pay Sprint a per call surcharge of \$0.35 for all originating payphone traffic (I) including FONCARD traffic, toll free switched and dedicated services traffic, Prepaid Card services traffic, and 10XXX-0 Plus Dial Around service traffic.

ISSUED:
March 31, 1997

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EFFECTIVE:
April 1, 1997

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TARIFF F.C.C. NO. 2

Original page _____
3rd Revised page 55
Cancels 2nd page 55

SPECIALIZED COMMON CARRIER SERVICE

3. TERMS AND CONDITIONS (Continued)

3.11 Payment of Charges (Continued)

.1 (Continued)

Sprint will provide Resellers with a call detail media containing the service usage of the Reseller's Resale End Users. Sprint may, at its option, and without liability to Reseller, modify the format of the call detail media following 30 days written notice to Reseller.

.2 Return Check Fee

A charge of ten dollars (\$10.00) will apply whenever a check or draft presented for payment of service is not accepted by the institution on which it is written.

- .3 All Sprint customers, except Resale Solutions customers, will incur a per call surcharge of \$0.30 for all calls which Sprint can identify as payphone-originated calls. These include FONCARD calls, prepaid card calls, toll free calls and 10XXX-0 Plus Dial Around service calls originating from a public or semi-public payphone. See Section 7 herein for surcharge information applying to Resale Solutions customers. (N)

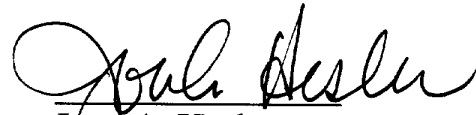
ISSUED:
October 10, 1997

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EFFECTIVE:
October 12, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document in CC Docket No. 96-128 was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 7th day of July, 1999 to the parties listed below.


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